

# SUPREME COURT OF THE UNITED STATES.

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## AIR-BRAKE CASES.

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### **Memorandum on Behalf of the Boyden Company re Petition for Rehearing.**

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It is not our purpose to trouble the Court with an argument in reply to the petition for rehearing, and brief in support thereof, which are occupied with criticisms of the decision of the Court reached after three exhaustive arguments of the case. We deem it proper, however, to call attention to a matter of vital concern to defendants.

When the case came to the Court in the spring of 1896, the Court recognized that defendants were entitled to a prompt adjudication (see motion to advance). The particular reason was that Congress had fixed a short limit of time within which the railroads of the country were required to equip their freight cars with air-brakes. That time (though it has been extended by Congress) has nearly expired, and further prolongation of the uncertainty created by this litigation would be as advantageous to complainant, and as injurious to defendants, as a decision in favor of the former. Railroads will not equip their cars with brakes which, by a subsequent order of the Court, they may be required to strip off. Thus,

for nearly nine years, during which defendants have been pursued in this litigation, complainant has enjoyed a practical monopoly, while defendants have been deprived of all use of their patented devices.

On page 16 of complainant's brief, filed with the petition, is the statement that in 1896 there were over four hundred thousand Westinghouse brakes (which, at forty dollars each, the standard price, represents an income of over sixteen million dollars), while of defendant's brake there were less than five hundred.

A prolongation of the conditions to which this result has been due would be of incalculable injury to defendants. We therefore most earnestly beg the Court, if it be possible, that the petition for rehearing be disposed of before the adjournment of the Court.

Very respectfully,

ANTHONY POLLOK,  
PHILIP MAURO,  
*Of Counsel for Defendants.*



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99 & 116.

IN THE  
**Supreme Court of the United States**  
**OCTOBER TERM, 1897.**

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*Nos. 99 and 116.*

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WESTINGHOUSE AIR BRAKE COMPANY ET AL.

vs.

BOYDEN BRAKE COMPANY ET AL.

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**SUGGESTION OF COUNSEL AS TO RE-ARGUMENT.**

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*To the Honorable the Chief Justice and Associate Justices of the  
Supreme Court of the United States:*

The parties to the above-entitled cause, in view of the fact that the said cause has twice been argued before this honorable Court, respectfully suggest that it may conduce to the convenience of the Court, as well as to that of the parties to the cause and their respective counsel, if to the Court it seems proper, that the Court would indicate, with as much particularity as is practicable, the points in said cause upon which the Court is desirous of hearing counsel in the re-argument that has been ordered.

The undersigned therefore respectfully unite in this sug-

gestion, and ask the Court to take such action hereon as to it may seem proper.

And as in duty.

BARTON & WILMER,

*Of Counsel for Boyden Brake Co.*

GEORGE H. CHRISTY,

FREDERIC H. BETTS,

*Of Counsel for Westinghouse Air Brake Co.*

MELVILLE CHURCH,

*Of Counsel for Boyden Power Brake Co.*

[Endorsed:] Case No. 16,137. Supreme Court U. S., October term, 1897. Term Nos., 99 and 116. Boyden Power Brake Co. *et al.*, app'ts, *vs.* Geo. Westinghouse, Jr., *et al.* Suggestion that Court indicate points on re-argument. Filed January 17, 1898.